

IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MARYLAND, NORTHERN DIVISION

COLOMBO BANK, F.S.B.,

Appellant,

v.

CHARLES GOLDSTEIN, Trustee  
of the Estate of Maryland  
Property Associates, Inc.,  
et al.,

Appellee.

CIVIL NO: WDQ-02-4010

MEMORANDUM OPINION AND ORDER

On August 29, 2003, the Court entered judgment against the Appellant, Colombo Bank, F.S.B. ("Colombo Bank"), in the amount of \$276,180.18. Colombo Bank filed an appeal with the Fourth Circuit Court of Appeals on September 15, 2003.

The issue before the Court is whether Colombo Bank, a judgment debtor, may obtain a stay of the judgment pending appeal without posting a supersedeas bond.

ANALYSIS

Federal Rule of Civil Procedure 62(d) provides that "[w]hen an appeal is taken[,] the appellant[,] by giving a supersedeas bond[,] may obtain a stay." The Rule makes clear that a judgment debtor is entitled to a stay if the debtor provides a supersedeas bond. *Alexander v. Chesapeake, Potomac, and Tidewater Books, Inc.*, 190 F.R.D. 190, 192 (E.D. Va. 1999) *aff'd without opinion*

243 F.3d 535 (4th Cir. 2001). Rule 62(d) does not state whether the required bond must fully secure the judgment. *Id.*

When considering a motion under Rule 62(d), the Court should be mindful of the rationale of the underlying rule. *Hamlin v. Charter Township of Flint*, 181 F.R.D. 348, 351 (E.D. Mich. 1998). The Rule seeks to balance the parties' interests by preserving the status quo while also protecting the appellee's rights. *Id.* (citing *Poplar Grove Planting and Refining Co., Inc. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1190 (5th Cir. 1979)). By posting bond, a judgment debtor is protected from the risk of satisfying the judgment "only to find that restitution is impossible after reversal on appeal." *Poplar Grove*, 600 F.2d at 1191. Concurrently, because Rule 62(d) deprives the appellee of his right to enforce a valid judgment immediately, the appellant must post bond to ensure compensation to the appellee. *Hamlin*, 181 F.R.D. at 351. Usually a full supersedeas bond is required. *Id.*; *Alexander*, 190 F.R.D. at 193; *Holland v. Law*, 35 F. Supp. 2d 505, 506 (S.D.W.V. 1999).

Several Circuits have concluded that the court may use its discretion to reduce the supersedeas bond requirement of Rule 62(d). *Id.* (citing *Olcott v. Delaware Flood Co.*, 76 F.3d 1538, 1559-60 (10th Cir. 1996); *Townsend v. Holman Consulting Corp.*, 881 F.2d 788, 796-97 (9th Cir. 1989); *Dillon v. City of Chicago*, 866 F.2d 902, 904 (7th Cir. 1988); *Texaco, Inc. v. Pennzoil Co.*,

784 F.2d 1133, 1154 (2d Cir. 1986), rev'd on other grounds, 481 U.S. 1, 95 (1987); *Federal Prescription Serv., Inc. v. American Pharm. Assoc.*, 636 F.2d 755, 758 (D.C. Cir. 1980); *Poplar Grove*, 600 F.2d at 1191). If the court requires less than a full supersedeas bond, however, the burden is on the moving party to demonstrate objectively why the departure is appropriate. *Hamlin*, 181 F.R.D. at 353. The opposing party is under no obligation to introduce evidence to the contrary. *Id.*

Full bond may not be necessary when the judgment debtor objectively demonstrates a present financial ability to pay the money judgment and presents a financially secure plan for maintaining that solvency during the appeal. *Poplar Grove*, 600 F.2d at 1191; *Hamlin*, 181 F.R.D. at 353; *Holland*, 35 F. Supp. 2d at 506; *Sibia Neurosciences, Inc. v. Cadus Pharm. Corp.*, 1999 WL 33554683 (S.D. Cal. 1999); *Advanced Estimating System, Inc. v. Riney*, 171 F.R.D. 327, 328 (S.D. Fla. 1997).

Colombo Bank argues that because it is a federally insured savings bank with assets in excess of \$90,000,000, and because the bank president confirmed the bank's intention to maintain that level of assets throughout the appeal, a stay should be granted without the provision of a supersedeas bond. Appellant's Mem. in Supp. of Mot. to Waive Supersedeas & Stay Execution Pending Appeal 3. In support of its argument, Colombo Bank

submitted its Statement of Condition.<sup>1</sup> The Statement of Condition shows that Colombo Bank holds assets in excess of \$90,000,000. Appellant's Ex. 1 (Statement of Condition). In addition, Colombo Bank offered its president's declaration that the Statement of Condition is accurate and his expectation the bank will remain in a substantially similar financial condition. Rial Aff. ¶ 4-5.

Although Colombo Bank provided adequate evidence to show its current financial ability to pay the judgment, the evidence submitted was insufficient to prove that it has a financially secure plan for maintaining its solvency throughout the appeal. *See Chaney v. New Orleans Pub. Facility Mgmt., Inc.*, 1998 WL 43140, \*2 (declining to award stay without supersedeas bond when the appellant showed current solvency but presented no financially secure plan for maintaining solvency); *Poplar Grove*, 600 F.2d at 1191 (same); *Sealover v. Canada*, 806 F. Supp. 59, 62-63 (M.D. Penn. 1992) (same).

#### CONCLUSION

Rule 62(d) entitles the Appellant to a stay of judgment pending appeal provided that a supersedeas bond is posted. Accordingly, the Appellant's request for a stay of judgment while its appeal is pending will be granted upon its posting of a

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<sup>1</sup>The Statement of Condition is prepared regularly by the bank to demonstrate its financial condition.

supersedeas bond.

November 3, 2003  
Date

/s/  
William D. Quarles, Jr.  
United States District Judge